IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/696,964	Examiner:	Wu, Junchun
Filed:	October 30, 2003	Group/Art Unit:	2191
Inventors:		Atty. Dkt. No:	5681-54200
Neelam N. Vaidya			
Title:	System and Method for Software Patching for Cross-Platform Products		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Applicant requests review of the rejection in the above-identified application. Claims 1-22 are pending in the application.

Telephone Interview Summary

A telephone interview was conducted on October 9, 2007 between Applicant's undersigned attorney and Examiner Wu and SPE Zhen. Once Applicant's undersigned attorney explained how claim 1 distinguishes over the Moshir reference, the Examiners acknowledged that the distinction appeared to be valid. However, no explicit agreement was reached because the Examiners wanted more time to study the Moshir reference and possibly perform an updated search. The Examiners suggested that Applicant file this Pre-Appeal Conference Request.

The Examiner rejected claims 1-7, 9-18 and 20-22 under 35 U.S.C. § 102(e) as being anticipated by Moshir et al. (U.S. Publication 2002/0100036) (hereinafter "Moshir"). Applicant traverses the rejection for at least the following reasons.

In regard to claim 1, Moshir fails to teach or suggest deploying a patch package on a first computer running a first type of operating system, wherein the patch package comprises a patching mechanism and a first set of one or more new code components. The Examiner asserts that Moshir teaches these limitations and cites paragraph [0022], lines 1-4 and paragraph [0026], lines 1-5, which are reproduced below:

> Patch fingerprints 902 give a recipe to allow a repository component to determine if a given software package (associated with the patch fingerprint), patch, driver, etc. should be loaded onto a computer in the system. (paragraph [0022], lines 1-4)
>
> The patches that need to be loaded onto specific target computers are listed on the update server 220 in update lists 222 associated with update agents 204, 210; in the illustration, list 224 is associated with Target1 202, and list 226 is associated with Target2 208. The update lists… (paragraph [0026], lines 1-5)

While Moshir does mention a "software package," "patch" and "driver," nowhere does Moshir teach or suggest that such items comprise a.) a patching mechanism and b.) a first set of one or more new code components. Furthermore, nowhere does Moshir teach or suggest that executing his "software package," "patch," and/or "driver" comprises replacing a first set of one or more old code components in a first application with the first set of one or more new code components (comprised within the patch package), as specified by the limitations of claim 1. Instead of teaching deploying a patch package that comprises a patching mechanism (executable to replace a first set of one or more old code components in a first application with a first set of one or more new code components) and the first set of one or more new code components, Moshir teaches update agents that install patches (*see e.g.,* paragraph [0027]). **However, nowhere does Moshir teach or suggest that his update agent and his patches are comprised within a same patch package that is deployed on a first computer running a first type of operating system.**

Furthermore, Moshir fails to teach or suggest a method for patching applications comprising deploying a patch package on a first computer running *a first type* of operating system, wherein the patch package comprises a patching mechanism and a first set of one or more new code components, and wherein the patching mechanism is also executable on a second computer running *a second type* of operating system, and executing the patching mechanism on the first computer, wherein executing the patching mechanism comprises replacing a first set of one or more old code components in a first application with the first set of one or more new code components. The Examiner asserts Moshir discloses a patching mechanism that is also executable on a second computer running a second type of operating system and cites paragraph [0047] and lines 1-3 of paragraph [0009] reproduced below:

> A given network 100 may include Novell Netware network operating system software (NETWARE is a registered trademark of Novell, Inc.), NetWare Connect Services, VINES, Windows NT, Windows 95, Windows 98, Windows 2000, Windows ME, LAN Manager, or LANtastic network operating system software, LNIX, TCP/IP and NFS-based systems, Distributed Computing Environment software, and/or SAA software, for instance (VINES is a trademark of Banyan Systems; NT, WINDOWS 95, WINDOWS 98, WINDOWS 2000, WINDOWS ME, WINDOWS XP and LAN MANAGER are trademarks of Microsoft Corporation; LANTASTIC is a trademark of Artisoft; SAA is a

> mark of IBM). The network may include a local area network which is connectable to other networks through a gateway or similar mechanism. (paragraph 0047)
>
> When an application is installed, it may contain one or more of these operating systems file patches along with the standard computer files. The patches are generally included because the application vendor discovered some anomalous behavior in one or more of the operating system files, and so sent a "fix" in the form of a different version of one of these troublesome files. This would cause relatively little difficulty if only one application vendor performed this service, or if the file modified by the application vendor is used only by that vendor's application. However, this is often not the case. (paragraph 0009)

However, the cited art fails to mention anything about a patching mechanism executing on a first computer running a first type of operating system much less a patching mechanism that is also executable on a second computer running a second type of operating system. Instead, Moshir describes that his system's network may include various network operating system software applications (paragraph 0047) and that an application may contain one or more operating systems file patches (paragraph 0009). However, a network containing various software applications and/or an application containing one or more operating systems file patches fails to teach or suggest anything at all about the functionality of a patching mechanism much less a patching mechanism of a patch package that is deployed on a first computer running a first type of operating system and also executable on a second computer running a **different** type of operating system.

Moshir does describe an "update agent" (*see e.g.,* Fig. 2, item 204; Fig. 5, item 508) that installs software patches (*see e.g.,* paragraph 27, lines 5-7) on target computers. However, Moshir fails to teach or suggest, in the cited art or elsewhere, that the "update agent" (or any other item of Moshir's system) meets the limitations of claim 1 including **the same** patching mechanism executable on computers running two different types of operating systems.

In the response to arguments section, the Examiner asserts that "Moshir discloses a method wherein patch mechanism is executing on the first computer running a first type of operating system and is also executable on the second computer running a second type of operating system." The Examiner cites lines 3-6 of paragraph 103, which is reproduced below:

> The target computer contains a network connection 544, which may be protected from the outside by a firewall 526 as is discussed above. Different target computers within a network may run on different platforms; for instance, some may be Windows machines, some Unix machines, etc. The same update server 528 can be used for all the platforms, or different update servers 528 can be specified by platform type, or the update servers 528 can be assigned to target computers 500 using a different schema. (paragraph [0103], emphasis added)

While Moshir does disclose that different target computers may run on different platforms, **nowhere does Moshir teach or suggest that the update agents themselves are executable on a first computer running a first type of operating system and a second computer running a second type of operating system.** The Examiner further asserts "[t]hus Moshir describes an update agent that installs software patches on target computer directly from update server (see paragraph 0027, lines 5-7 "*update agent 204 attempts to install the software patch directly from the update server*"). **However, nowhere does Moshir that any *particular* update agent (including update agents 204 and 210) is executable on a first computer running a first type of operating system and a second computer running a second type of operating system.** In Figure 2, Moshir illustrates update agent 204 as a component of target1 202 and a second update agent 210 as a component of target2 208. While Moshir illustrates each update agent as a component of its respective target computer, nowhere does Moshir teach or suggest that any one of the update agents is executable on another target computer running another type of operating system. **Whether or not target computers may run on different platforms is irrelevant since Moshir fails to teach or suggest that the same update agent is executable on two different target computers running on different types of operating systems.** The system and method taught by Moshir is clearly different than Applicant's invention as claimed.

In the Advisory Action, the Examiner cites paragraph [0020], which he interprets to mean "software or patch deployment may run on multiple operating systems in different machines." As the Examiner notes, paragraph [0020] does disclose "…the invention facilitates software deployment, software installation, software updating, and file distribution based on software and patch finger printing across multiple operating systems and devices, across a network." **Again, Moshir teaches that his update agents install his patches (*see e.g.,* paragraph [0027]). Accordingly, whether disparate elements of Moshir collectively facilitate "software deployment, software instillation, software updating, and file distribution … across multiple operating systems" is irrelevant as Moshir fails to teach or suggest that any particular update agent is executable on both a first computer running a first type of operating system and a second computer running a second type of operating system.**

In the Advisory Action, the Examiner cites paragraph [0026] and asserts "[a]s shown in Fig. 2, the software patch 1 232 distributes in update list 224 and 226 associated with update agent 204 and 210 in target computer 202 and 208 respectively" and "[t]hus the same software patch de[p]loys to different machines." First, in regard to Figure 2, it is not clear from the disclosure of Moshir whether the "PATCH1" entry of each update list necessarily corresponds to the same patch. Indeed, the "PATCH1" entry could simply refer to the position within each update list. Thus, Moshir does not necessarily teach that the same patch is deployed to each target computer (items 202 and 208). Accordingly, the

Examiner's assertion that the same patch is deployed to each computer system is mere speculation. Furthermore, nowhere does Moshir teach or suggest that the particular computer systems of Figure 2 (e.g., Target 1 202 and Target2 208) are running different types of operating systems. Furthermore, even were the same patch to be distributed to Target 1 202 and Target 2 208, Moshir teaches that such patch would be installed by the update agent of the respective computer system (*see e.g.,* paragraph [0027]). However, Moshir clearly illustrates two disparate update agents in Figure 2: update agent 204 and update agent 210. **While update agent 204 is presumably executable on target 1 202, nowhere does Moshir teach or suggest that update agent 204 is also executable on a second computer running a second type of operating system**. Likewise, **while update agent 210 is presumably executable on target 1 208, nowhere does Moshir teach or suggest that update agent 210 is also executable on a second computer running a second type of operating system**. Since claim 1 requires that the patching mechanism is executable on a first computer running a first type of operating system and a second computer running a second type of operating system, Moshir's update agents do not meet the specific limitations of claim 1.

For at least the reasons presented above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested. Similar remarks apply to claim 12. Applicants also assert that numerous ones of the dependent claims recited further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

Respectfully submitted,
/Robert C. Kowert/
Robert C. Kowert, Reg. #39,255
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

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